

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

ETC SUNOCO HOLDINGS LLC	)	
(formerly known as SUNOCO, INC.),	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:20-cv-2981
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

**APPENDIX TO PLAINTIFF’S RESPONSE TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff ETC Sunoco Holdings LLC (“Sunoco”) submits the following appendix in support of its Response to Defendants’ Motion for Summary Judgment.

Document Description	Exhibit	Appendix Cite
Declaration of Bradford Whitehurst	1	App. 001 – App. 003
Declaration of Vivek A. Patel	2	App. 004 – App. 007

/s/ Vivek A. Patel

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(f/k/a SUNOCO, INC.)**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served upon all counsel of record upon its filing via this Court's CM/ECF electronic case filing system on July 6, 2021.

/s/ Vivek A. Patel  
Vivek A. Patel

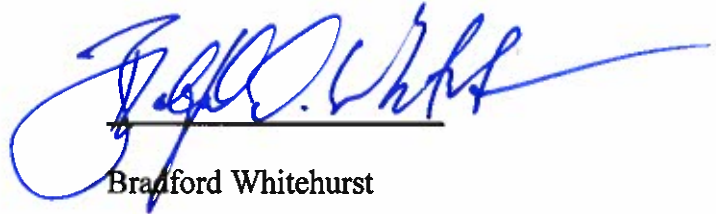
# Exhibit 1



5. Sunoco is no longer awaiting any adjustments to its 2010 and 2011 tax years related to the § 45O tax credit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed: July 5, 2021



Bradford Whitehurst

# Exhibit 2

**IN THE UNITED STATES DISTRICT COURT  
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ETC SUNOCO HOLDINGS LLC  
(formerly known as SUNOCO, INC.),

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:20-cv-2981

## DECLARATION OF VIVEK A. PATEL

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. My name is Vivek A. Patel, and my office address is 815 Connecticut Ave NW, Washington, DC 20006. I am a member of the bars of the State of Georgia and the District of Columbia and admitted to practice in the Northern District of Texas *pro hac vice*. I am a partner in the Tax Practice Group of Baker McKenzie LLP and represent ETC Sunoco Holdings LLC (“Sunoco”), the plaintiff in this case.

2. Beginning in January 2017, Sunoco and the Internal Service Revenue (“IRS”) signed a series of Forms 907, Agreement to Extend the Time to Bring Suit, extending the statute of limitations for the claims underlying *ETC Holdings LLC v. United States of America*, No. 3:20-CV-2981 (N.D. Tex.). On June 29, 2020, the IRS agreed to only extend the statute of limitations for an additional 90 days, to September 28, 2020, and indicated that it would not grant any further statute of limitations.

3. On February 8, 2021, Jonathan Blacker, counsel for the Defendant, United States of America (“Government”), contacted Robert H. Albaral, counsel for Sunoco, and requested an



extension of 45 days to file its Answer. On the same day, I informed Mr. Blacker that Sunoco did not oppose the extension request. During this conversation, counsel for both parties discussed the likely appeal of *Exxon Mobil Corp. v. United States*, No. 3:16-cv-2921, (N.D. Tex.) to the United States Court of Appeals for the Fifth Circuit. The Government filed its unopposed motion for extension of time to file its Answer on February 9, 2021 and thereafter obtained the extension on February 22, 2021. The Government filed its Answer on March 29, 2021.

4. On April 29, 2021, I contacted Mr. Blacker in an effort to file a joint motion for stay pending the decision in *Exxon Mobil Corp. v. United States*, No. 21-10373. During that conversation, for the first time, Mr. Blacker informed Sunoco that the Government had prepared and intended to file a motion for summary judgment based on collateral estoppel. On that call and on another call in the following days, I explained to Mr. Blacker Sunoco's position and circumstances in filing this case as was later reflected in its motion to stay, including that it was unnecessary to address the collateral estoppel issue if *Exxon* was decided in the government's favor.

5. On May 5, 2021, Mr. Blacker informed me that the Government would not join Sunoco's motion to stay and intended to promptly file its motion for summary judgment. On the same day, May 5, 2021, the Government filed its motion for summary judgment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Executed: July 6, 2021

A handwritten signature in black ink, appearing to read 'Vivek Patel', is written over a horizontal line.

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